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SUBJECT: Northwest Passage Conference in Ottawa Offers Bold Idea

11. Sensitive But Unclassified, not for distribution outside USG channels.

12. (SBU) Summary: Panelists at an Ottawa conference on Canada's arctic waters called for Canada and the U.S. to open talks on the Arctic route because the increasing melt rate of Arctic sea ice could allow significant summer navigation through the Northwest Passage (NWP) as soon as 14 years from now. In their opinion a well-thought out governance structure to manage shipping and other activities and to address environmental concerns is imperative. The thesis presented by the organizers of the event was that a bilateral agreement, similar in intent to the 1988 Canada-United States Agreement on Arctic Cooperation (regarding government ice-breakers), could be crafted in which the United States "agrees" to Canada's claim of sovereignty over the waters of the Northwest Passage (essentially allowing Canada to claim the passage as Internal waters) and Canada would, in return, agree to unfettered access by the U.S. for transit of the passage. The Russian Deputy Chief of Mission in Ottawa, who participated in the conference, supported this notion. According to this thesis, the U.S. by acceding to Canada's desire for the NWP to be internal waters, could collaborate with Canada to control and safeguard the passage and secure the North American continent from security threats in the far north. The conference prompted Canadian Department of Foreign Affairs and International Trade (DFAIT) officials in attendance to approach Embassy officers to explore the idea of government-to-government arctic discussions. End Summary.

Legal Scholars, Political Scientists and Real Scientists
Discuss NWP

13. (U) Michael Byers, Professor of Global Politics and Law at the University of British Columbia in Vancouver and Suzanne Lalonde, Professor of Law at the University of Montreal organized a one-day program on June 14 in Ottawa to discuss the subject of "Canada's Arctic Waters in Law and Diplomacy". Byers and Lalonde argue that the end of the Cold War and the rise of global terrorism have changed the world situation such that the Canadian position regarding the NWP (that it is Canadian internal waters subject to full Canadian law) actually coincides with U.S. security interests. As a result, they assert, the two countries have a unique opportunity to resolve a long-standing dispute and

to concurrently improve the security of the continent's citizens and environment. The day long event featured five panel discussions, four of which included American participants; three that represented universities while one was from the United States Arctic Research Commission. Embassy ESTH Counselor and Specialist, as well as the Naval Attach, attended the program.

14. (U) The first panel addressed the matter of "Law"; the American participant was Professor Bernard Oxman of the University of Miami's faculty of Law, a world renowned expert on matters of maritime law and the UN Convention on the Law of the Sea (UNCLOS). The other two panelists were a Belgian (Erik Franckxx, Free University of Brussels) and an Australian (Donald Rothwell of the University of Sydney). The panelists each presented arguments for about 10 minutes, concerning the validity and utility of Canada's maritime claims in the arctic followed by a roughly 60 minute Q&A session. Franckxx provided a legal

history of the Canadian claim. Rothwell argued that Canada cannot claim the NWP as historic waters since it has been so little used; but he was the first speaker of the day to suggest that the entire argument could be bypassed if Canada and the United States were to negotiate a bilateral cooperative agreement regarding use of the NWP. He suggested also that the Antarctic experience may illuminate solutions.

15. (U) The American legal scholar, Dr. Oxman, (who was one of the senior U.S. negotiators for UNCLOS III) noted that freedom of navigation in arctic waters is one principle that supports the global freedom of navigation and of over flight (innocent passage and /or transit passage). His statement

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suggested that any acknowledgement by the United States, or other governments, that the NWP is internal waters would erode the global principle, and therefore is to be avoided. Oxman did also note that UNCLOS Article 234 (the ice-covered area clause) allows Canada, within its exclusive economic zone, to exercise effective measures, specific to the harsh arctic realm, to prevent, reduce and control marine pollution from vessels. Incidentally, Oxman also related his recollection of the Canadian position during the UNCLOS III negotiations that "Canada has no international straits"; a choice of phrase he attributed to a careful diplomatic attempt to not be forced to argue the matter of inviolability of International Straits.

16. (U) The second panel addressed "Science". The American panelist was George Newton, Chair of the U.S. Arctic Research Commission. Professor David Barber of the University of Manitoba in Winnipeg, and John Falkingham of Environment Canada's Marine and Ice Services Division rounded out the panel. The panelists concerned themselves with describing ice conditions, i.e., the physical geography and climatology of the Arctic Ocean region with Barber articulating the position that ice cover is rapidly diminishing, that this process is irreversible and that possibly as early as 2020-2050 the NWP will be a true navigable waterway. On the other hand, Falkingham stressed the uncertainty of our knowledge noting that for as long as we have had records, the ice cover has been highly variable from year to year. Falkingham also said that in recent years the sea ice throughout the NWP and Canada's Arctic Archipelago has actually increased in thickness. In fact, he thinks that the NWP will be the last passage (after the Russian Northern Route and the Murmansk to Churchill route) to become navigable; his time frame is 2070 to 2100. He also reminded the audience that in the arctic winter there will always still be ice in the NWP, rendering it un-navigable during that part of the year.

17. (U) George Newton of the U.S. Arctic Research Commission,

like Falkingham, explained to the audience that our scientific knowledge of the arctic is very, very modest. He characterized forthcoming exploration and research during the 2007-2008 International Polar Year (IPY) as a voyage of discovery comparable to that of Christopher Columbus.

18. (U) The third panel addressed "Security and Policing"; the American participant was Professor Elizabeth Elliott-Meisel of Creighton University in Omaha, Nebraska. Professor Rob Huebert of the Center for Military and Strategic Studies at the University of Calgary in Alberta, and the former Commander of the Canadian Forces Northern Area, Colonel Pierre Leblanc (CF ret.), were the Canadian panelists. Elliott-Meisel described the current situation as similar to the period leading to the 1988 Canada-U.S. Arctic Cooperation Agreement, characterized by acknowledged interdependence and close POTUS-Canadian PM links. She asserted that "cooperation may not compromise sovereignty, but lack of cooperation will mean less security." She proposed that the United States, within a bilateral agreement, should recognize Canadian sovereignty over the NWP, and Canada and the U.S. would then work collaboratively to ensure appropriate capabilities are brought to bear to ensure security of Canada's arctic maritime domain.

19. (U) Both Colonel Leblanc and Professor Huebert decried the lack of Canadian military capability in Canada's arctic regions. Leblanc emphasized that one test of sovereignty is to "know what is going on in your territory," and Canada, in his opinion, cannot meet this test in the arctic. Leblanc also mentioned that the unchallenged transit of submarines through the NWP bolsters the claim that it is an international strait. Finally, Leblanc agreed with previous panelists that U.S. recognition of Canadian sovereignty would serve to strengthen overall North American security. Professor Huebert did not explicitly support a Canada-U.S. agreement on the NWP, suggesting instead that the sovereignty debate is a red herring. In his opinion, the critical issue is security, and a shared Canada-U.S. approach to security would achieve the greatest benefit for North America. In contrast to the Cold War, however, when

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the threat was a military one posed by the Soviet Union (and which the United States addressed throughout Canada's arctic via the DEW Line, subs under arctic ice, etc.) the new threats are somewhat ill-defined and may include environmental threats (oil spills), threats to cultures (traditional Inuit mode of life) and economic threats (illegal fishing) as well as traditional military and criminal threats. The challenge is for government leaders to identify and prioritize the threats, and that effort will, in turn, precipitate policy solutions. He noted that so far the political authorities are "all talk and no action" on taking arctic security seriously.

110. (U) The fourth panel addressed "Diplomacy." The American participant was Christopher Joyner, Professor and Director of International Law and Politics at Georgetown University. The other two panelists were Sergey Petrov, Deputy Chief of Mission at the Russian Embassy in Ottawa and conference organizer Professor Byers. Petrov told the conference that his government would support a negotiated deal between Canada and the United States that would see those countries decide on how to regulate the Arctic waters of the Northwest Passage. He noted that development of the NWP, and the reinvigoration of the Russian northern route as well, will only be possible with a huge influx of financial resources and that that will require multinational cooperation on governance and regulation. "I'm quite comfortable having Canada and the U.S. decide how to ensure this future seaway is available for international sailing" he said to the press after speaking at the conference.

111. (U) Joyner discussed modes of governance for ensuring

safe passage through the NWP and he asked, "Is resolution of sovereignty a prerequisite for establishing a regime for NWP navigation?" His answer was maybe, but not necessarily. Professor Joyner described how the IMO'S Polar Code could eventually become customary international law, but that process will be long and slow. Alternatively the Turkish approach in 1998 of unilaterally implementing regulations on all vessels transiting the Turkish straits (Bosporus and Dardanelles) is another, more controversial, approach. Byers, reiterating the notion put forth in his conference discussion paper, proposed negotiations aimed at achieving U.S. recognition of Canada's claim, i.e., that the full force of Canada's domestic law applies in the passage, balanced off by a firm commitment to open access for all U.S. vessels, active promotion and support for international shipping, and immediate investments in equipment and personnel necessary to monitor and police the passage on a rigorous, year-round, basis.

¶12. (U) The final panel provided the "Inuit Perspective." There was no American participant on this panel. Ms. Aaju Peter, a young Inuit lawyer, provided several thoughtful observations. She noted that travel by dog sled over frozen passages in the arctic should be as valid as passage by ships on open water, or subs under the ice to establish historic use and sovereignty. She also noted that Article 15 of the Canada-Nunavut Land Claim authorizes a "Marine Council" to establish Inuit involvement in the development of the arctic maritime regime and that its efforts should feed into the Arctic Council's 2008 report on "Arctic Marine Qfeed into the Arctic Council's 2008 report on "Arctic Marine Shipping Assessment". That Arctic Council report will, in turn, feed the broader policy debate on sovereignty, security, and environmental and cultural protection. Ms. Peter also made the bold suggestion that local human capital, rather than imported southerners, should be trained and employed as the aircraft and ship pilots, the Search and Rescue technicians, the police and military staff required to manage increased ship and aircraft traffic in the arctic region.

¶13. (SBU) Comment: The discussion paper put forward by the symposium's organizers, Michael Byers and Suzanne Lalonde, which was prepared to encourage debate at the conference, was entitled "Who Controls the Northwest Passage." Their choice of the word "control" rather than ownership is significant. The majority of opinion offered by panelists suggested that some form bilateral agreement between Canada

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and the United States would allow effective shared control by the two countries of the NWP, balancing Canada's "sovereignty" need with America's security and transit imperatives. The conference discussion was notable for the relative balance of the presentations and the general lack of anti-U.S. rhetoric that has often characterized media reporting on this issue. There were a number of GOC officials with responsibility for arctic issues in attendance at the conference. Our private conversations with them tended to reflect an interest in discussion with the U.S. on the NWP, the bilateral dispute over border claims in the Beaufort Sea and other arctic issues. End Comment.

WILKINS